The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CLINTON S. SHEPPARD and DONALD R. MCCOMBES

Appeal No. 2001-0678
Application No. 08/877,711

ON BRIEF

Before KRASS, BARRETT and SAADAT, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-8 and 10-42.

The invention is directed to verifying a person's age to determine whether that person is authorized to engage in a certain activity.

Representative independent claim1 is reproduced as follows:

1. A process of determining whether a person is authorized at a first date, said person having a date of birth and an identification material having said date of birth encoded on a magnetic strip attached thereto, said person having an age, comprising:

(a) magnetically reading said date of birth from said magnetic strip attached to said identification material;

(b) computing said age by subtracting said date of birth from said first date;

(c) comparing said age to a standard age to determine whether said person is authorized; and

(d) notifying an operator if said person is authorized and notifying said operator if said person is not authorized.

The examiner relies on the following references:

Stuckert	4,277,837	Jul. 07, 1981
Benton	4,341,951	Jul. 27, 1982
DeBan et al. (DeBan)	5,386,103	Jan. 31, 1995
Bennett	5,550,359	Aug. 27, 1996
Carlisle et al. (Carlisle)	5,649,118	Jul. 15, 1997 (filed May 27, 1994)
Sharrard	5,722,526	Mar. 03, 1998 (filed Nov. 13, 1995)
Pescitelli et al. (Pescitelli)	5,845,256	Dec. 01, 1998 (effectively filed Aug. 19, 1993)

Claims 1-8 and 10-42 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner offers Sharrard and DeBan with regard to claims 1-8, 10-18 and 26-28. To this combination, the examiner adds Carlisle with regard to claims 29-31, Benton with regard to claims 19 and 20, Bennett with regard to claims 21, 24 and 25 and Stuckert with regard to claims 22 and 23. With regard to claims 32-36 and

39-42, the examiner cites Sharrad, DeBan, Benton and Pescitelli, adding Bennett to this latter combination with regard to claims 37 and 38.

Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

OPINION

Turning, first to independent claims 1, 5, 10 and 15, it is the examiner's position that Sharrad discloses the claimed subject matter but for a warning device electrically coupled to the microprocessor to alert an operator whether or not a person is authorized.

At the outset, we note that, of these independent claims, only claim 15 requires a warning device.

Appellants argue that both Sharrad and DeBan lack an operator to be actively notified. Appellants point out that neither Sharrad's vending machine nor DeBan's ATM would require an operator to be notified whether a person is authorized.

It is our view that both appellants and the examiner are reading the subject matter of independent claim 1 much too narrowly. We find that there is nothing in the language of claim 1 which prevents the "operator" and the "person" from being the same entity. Giving the claims this broad, yet reasonable interpretation, we find that

Sharrard, alone, meets the limitations of claim 1. The person's date of birth is read from a magnetic strip on the person's driver's license, age is computed by subtracting the date of birth from the current date and the age represented by the date of birth is compared to a standard age (e.g., 18 or 21) to determine if the person is authorized to purchase an item from the vending machine. If the person is authorized, the vending machine accepts the money and provides the person with the item. If the person is not authorized, a diverter switch directs the coins to be passed directly to the coin return, preventing the dispensing of the product. Accordingly, when inserted coins are returned to the person, i.e., the "operator," the operator is notified that the person (who also happens to be the operator) is not authorized. If the coins are accepted and the product dispensed, the person/operator is notified that he is authorized.

While appellants clearly intend, by their disclosure and by their arguments, that the "operator" is not the same individual as the "person," the language of claim 1 would not appear to preclude the possibility that they may be one and the same.

Accordingly, we will sustain the rejection of claim 1 under 35 U.S.C. § 103.

Since Sharrard is clearly directed to dispensing tobacco products from a vending machine (e.g., abstract, line 3), the claim 2 limitation of products from a group consisting of "alcohol products and tobacco products" is met.

With regard to claim 3, directed to certain events, such as "a strip tease act" or a "movie," rather than products from a vending machine, we agree with the examiner that the artisan would have found it obvious to apply Sharrard's teaching of determining whether a person is authorized to purchase or do a certain act, by calculating the person's age and comparing it with a standard age, to determining age appropriateness for many activities, strip tease acts and movies being but two of equally obvious activities which are to be restricted to those over a certain age. The particular event to which the age determination/authorization is applied is merely a statement of intended use, the invention clearly being applicable, in a manner within the meaning of 35 U.S.C. § 103, to many, equally obvious events.

As to claim 4, the identification material in Sharrard is clearly a driver's license.

With regard to claim 29, this claim adds the limitation that the minimum age is one to receive a discount (e.g., a senior citizen discount). But, again, in our view, this is merely a statement of intended use and the invention described by Sharrard, directed to computing an age to determine authorization to qualify for a certain event, would apply to determining authorized age to receive a discount, and this would have been clearly obvious to artisans. Moreover, as pointed out by the examiner, Carlisle, applied for this claim limitation, shows the obviousness of providing for discounts based on a minimum age when using an electronic card.

Independent claim 5 is directed to determining whether a person is older than two different minimum ages. While the claim does not specify that the first and second minimum ages are different, the claim must be read in that manner since to read it otherwise would make the comparing steps in the claim redundant, comparing the age of the person twice to the same minimum age. Accordingly, we interpret the claim to require first and second "different" minimum ages.

That being the case, there is clearly no teaching or suggestion in either Sharrard or DeBan of a comparison to two minimum or standard ages. The examiner merely states that it would have been obvious "to incorporate different standard ages in the comparing process in order to provide a system that accommodates to [sic, two] different types of restricted products, services, or areas" [Paper No. 6-page 5]. While it may, in fact, be obvious to do so, we cannot reach that conclusion based on the evidence provided by the examiner in offering the Sharrard and DeBan references.

Accordingly, we will not sustain the rejection of claims 5-8 and 30 under 35 U.S.C. § 103. Carlisle, applied for the added limitation of claim 30, does nothing to provide for the deficiencies of Sharrard and DeBan.

We will sustain the rejection of claims 10-14 and 31 under 35 U.S.C. § 103 for the same reasons, enunciated supra, for sustaining the rejection of claims 1-4 and 29.

Claim 15 adds the "warning device" connected to the microprocessor in order to alert an operator as to whether or not the person is authorized.

Other than to simply state, generally, that Sharrard does not disclose the warning device of claim 15 [principal brief-page 10], appellants do not argue the specifics of the "warning device." Their argument goes to not needing an "operator" in the references, but this argument has been dealt with supra. In any event, we agree with the examiner that it would have been obvious, within the meaning of 35 U.S.C. § 103, to include a warning device on the vending machine of Sharrard. Warnings devices were well known for informing operators of something amiss. DeBan, for example, teaches a rejection displayed on a display [column 9, lines 55-57]. Since the vending machine device of Sharrard is interested in keeping certain items out of the hands of underage users, a diverter switch is used to return inserted coins to the operator if the operator is underage. Along with this diversion, it would have been obvious to the artisan to also display a warning to the operator that the operator is underage and is not permitted to purchase the item the operator is seeking to purchase. Moreover, the simple diversion of the coins to the coin return in Sharrard is, itself a kind of "warning device" since it indicates to the operator, i.e., a warning, that the operator is underage.

Accordingly, we will sustain the rejection of claim 15 under 35 U.S.C. § 103.

Appellants argue the limitations of claims 19 and 20 regarding the use of lights and buzzers as the warning devices. If it would have been obvious to provide for a warning device in Sharrard, and we have held that it would have been, then it would have been obvious to use any of many well known type of warning devices such as lights and buzzers. The examiner cites Benton for the notoriety of providing dual indicators as a warning device and we agree that it would have been obvious to have modified Sharrard with such a teaching to indicate to the operator, by a green light, when the item in the vending machine is permitted to be purchased by the operator and to indicate with a red light when it is not so permissible, based on the age of the operator.

Similarly, with regard to claim 21, the use of a buzzer in Sharrard to indicate that the operator is not authorized to purchase the item, along with the diversion of the coins to the coin return, would have been obvious, especially in view of Bennett, cited by the examiner to show a buzzer alerting a user to a matter needing his attention.

Claim 24 further limits claim 15 to require a serial data communication port electrically coupled to the microprocessor to output the age. The examiner relies on Bennett for a teaching of providing information on a serial data communication port

electrically coupled to a microprocessor and urges that it would have been obvious to so provide information in Sharrard. Appellants do not deny the teaching of Bennett but argue that Bennett may output certain information (time and attendance) about an individual via a serial port but does not output information pertaining to a person's age.

We note that appellants do not argue the obviousness of providing for a serial data communication port in Sharrard, only that there is no teaching of providing age information over such a port. However, since Sharrard already teaches computing of age and using age as a factor of interest, it would have been obvious to artisans that such information may be communicated via a serial data communication port. Bennett provides the teaching of using such a port but the artisan would have understood that one is not limited to Bennett's specific type of information (time and attendance) in deciding the type of data to communicate through such port.

Claims dependent on claim 15 but not specifically argued by appellants or treated separately herein will fall with claim 15 for the same reasons as their counterparts (e.g., claims 16 and 17 are the counterparts of claims 2 and 3).

Accordingly, we will sustain the rejection of claims 15-28 under 35 U.S.C. § 103.

Independent claims 32 and 41 are similar to independent claim 5 in that these claims require comparisons with two separate minimum ages. While the examiner

relies on the teaching of the self-serve insurance policy vending machine of Pescitelli for a showing of a comparison of two different ages, it is unclear just why an artisan would have taken anything from this reference in order to modify Sharrard in such a manner as to compare an operator's age with two separate minimum ages. It may very well be that Sharrard's vending machines could sell liquor and tobacco and that the minimum age for purchasing tobacco may be 18 while the minimum age for purchasing alcohol may be 21 and so Sharrard might want to have two separate age comparisons depending on what the operator is attempting to purchase. However, in our view, this would be all speculation based on appellants' disclosure rather than being based on anything actually suggested by Sharrard or any of the other applied references.

Accordingly, we will not sustain the rejection of claims 32-42 under 35 U.S.C. § 103.

In summary, we have sustained the rejection of claims 1-4, 10-29 and 31 under 35 U.S.C. § 103 but we have not sustained the rejection of claims 5-8, 30 and 32-42 under 35 U.S.C. § 103.

The examiner's decision is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

ERROL A. KRASS Administrative Patent Judge	)))))) BOARD OF PATENT) APPEALS) AND) INTERFERENCES))))
LEE E. BARRETT Administrative Patent Judge	
MAHSHID D. SAADAT Administrative Patent Judge	

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